

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF PENNSYLVANIA

IN RE: ASBESTOS PRODUCTS)
LIABILITY LITIGATION) Consolidated under
) MDL DOCKET NO. 875
)
) Philadelphia, PA
) September 25, 2009
)

TRANSCRIPT OF SCHEDULING CONFERENCE
BEFORE THE HONORABLE THOMAS J. RUETER
UNITED STATES DISTRICT COURT JUDGE

APPEARANCES :

For the Plaintiffs: RICHARD BULLOCK, ESQUIRE
Early, Ludwick & Sweeney
One Century Tower, 11th Floor
265 Church Street, P.O. Box 1866
New Haven, Connecticut 06508

For the Buffalo Pumps:

DAVID A. GOLDMAN, ESQUIRE
Governo Law Firm
260 Franklin Street
Boston, Massachusetts 02110

For Westinghouse:

ANTHONY MIRABILE, ESQUIRE
McShea, Tecce
Bell Atlantic Tower, 28th Floor,
1717 Arch Street
Philadelphia, Pennsylvania

For Foster Wheeler: R. BART TOTTEN, ESQUIRE
JAMES R. OSWALD, ESQUIRE
Adler, Pollock & Sheehan, P.C.
One Citizen's Plaza, 8th Floor
Providence, Rhode Island 02903

DENNIS VEGA, ESQUIRE
Sedgwick, Detert, Moran & Arnold
3 Gateway Center
12th Floor
Newark, New Jersey 07102

(Appearances Continue)

For Crane & Company:	ERIC COTTLE, ESQUIRE K&L Gates LLP Henry W. Oliver Bldg. 535 Smithfield St. Pittsburgh, Pennsylvania
For Bendix:	BENJAMIN ROSE, ESQUIRE Rawle & Henderson The Widener Building One South Penn Square Philadelphia, Pennsylvania
For General Electric:	DAN LaBELLE, ESQUIRE Halloran & Sage LLP 315 Post Road West Westport, Connecticut
	JEFFREY THOMEN, ESQUIRE McCarter & English CityPlace I 185 Asylum Street Hartford, Connecticut 06103
For McMaster Car Supply Company:	JAMES P. HADDEN, ESQUIRE Marks, O'Neill, O'Brien & Courtney 1800 John F. Kennedy Boulevard Philadelphia, Pennsylvania 19103
Audio Operator:	Mark Rafferty
Transcribed by:	DIANA DOMAN TRANSCRIBING P.O. Box 129 Gibbsboro, New Jersey 08026-129 PHONE: (856) 435-7172 FAX: (856) 435-7124 E-mail: Dianadoman@Comcast.net

Proceedings recorded by electronic sound recording; transcript produced by transcription service.

1 (Call to the Order of the Court)

2 THE COURT: I like to introduce myself. My name is
3 Judge Reuter. Many of you have met me already. I see some
4 familiar faces back there.

5 Let me tell you about our agenda, what I like to do.
6 First of all, I'd like to see who's here today. That's the
7 first thing. I'll take a little bit of a roll call. And
8 then, after that, I'd like to go through each of the
9 individual cases, I've grouped into two, the Rhode Island case
10 and the Connecticut cases.

11 And I'd like to get -- hear the views from counsel on
12 where we are in discovery on those cases. I don't think
13 there's -- scheduling orders have been entered into any of
14 these cases. So to the extent we need to enter a scheduling
15 order, I'll do that after hearing the input of counsel.

16 And then I want to meet with the plaintiff's attorney
17 and with each of defense counsel. Some of you I know have
18 clients that are in multiple cases here and named as
19 defendants.

20 I'll meet privately with both you and the plaintiff's
21 counsel, to see if we can settle of these cases. Okay? And
22 if there's any other items, any other issues you want to
23 discuss, we can do that, too.

24 So let me first -- what I did was, I went through all
25 the dockets for each one of these cases. And I made a list of

1 each of the defendants.

2 Surprisingly, some of these dockets I don't think are
3 correct, because some defendants, I've received some
4 settlement memorandum from some defendants that are not named
5 in the docket.

6 So what I want to do is, I'm going to go through each
7 of these defendants, and if you would, stand up if you
8 represent any of these defendants, and identify yourself.
9 Okay?

10 Let me first ask counsel for plaintiffs to introduce
11 themselves.

12 MR. BULLOCK: Richard Bullock, Your Honor, with the
13 law firm of Early, Ludwick & Sweeney.

14 THE COURT: Okay. And, Mr. Bullock, you represent
15 all the plaintiffs in all the cases, right?

16 MR. BULLOCK: Yes, sir.

17 THE COURT: Okay. Great. Thank you. All right.
18 First Asbestos Corporation Limited, named as defendant in the
19 William Koslowski case, from the District of Rhode Island.

20 MR. BULLOCK: They are not a defendant anymore, Your
21 Honor.

22 THE COURT: They've been dismissed, or --

23 MR. BULLOCK: They should have been dismissed, if
24 they were not.

25 THE COURT: Okay. Well it looks like they haven't

1 been dismissed, because they're still on the docket. So --

2 MR. BULLOCK: I noticed that -- I'm sorry.

3 THE COURT: Yes. Go ahead.

4 MR. BULLOCK: I noticed that, for some strange reason
5 on a lot of these removal cases, the District Court adds in a
6 whole bunch of defendants that weren't named in the original
7 state court complaint.

8 THE COURT: Oh, really.

9 MR. BULLOCK: So I think the electronic docket is
10 incorrect. And if you actually look at the suit that was
11 removed -- now that may not be true for Koslowski, but in a
12 lot of them --

13 THE COURT: If you look at the docket from the
14 District of Rhode Island, they're not named in the case.
15 Okay. Well, great. Thank you.

16 Bell Asbestos Mines.

17 MR. BULLOCK: Is that Koslowski, again?

18 THE COURT: Koslowski, also.

19 MR. BULLOCK: The only defendant left in Koslowski is
20 Bendix Corporation.

21 THE COURT: Okay.

22 MR. BULLOCK: And I forgot to ask if somebody from
23 Bendix is here. Yes. Okay.

24 THE COURT: All right. Where that's -- Bendix is
25 next. Okay. And is it Mr. Borgelan (sic)?

1 MR. ROSE: No, Your Honor. Benjamin Rose, Rawle &
2 Henderson, from Philadelphia.

3 THE COURT: Okay. Thank you very much. All right.
4 And Borg Warner, also Koslowski, same situation.

5 MR. BULLOCK: Yes, Your Honor.

6 THE COURT: They were never named?

7 MR. BULLOCK: They actually were named, and we
8 resolved with them.

9 THE COURT: Okay.

10 MR. BULLOCK: I believe we resolved with them a
11 substantial time ago. I could give you the exact date.

12 THE COURT: All right. Okay. So to the extent
13 there's not a dismissal, we should dismiss them.

14 MR. BULLOCK: Yes.

15 THE COURT: As settled.

16 MR. BULLOCK: Do you think it would be helpful if we
17 -- is there any way we could just file one document dismissing
18 everybody but Bendix?

19 THE COURT: Sure. Yes.

20 MR. BULLOCK: We'll get that filed as soon as we get
21 back to Connecticut, Your Honor.

22 THE COURT: Okay. Great. Brinco Mining Limited.
23 Also, same -- has that been resolved, or they were never
24 named? They're also -- formerly known as Cassiar Asbestos
25 Corp.

1 MR. BULLOCK: I'm sorry, what was that name, again?

2 THE COURT: Brinco, B-R-I-N-C-O, Mining, also named
3 in Koslowski.

4 MR. BULLOCK: Yeah, they were originally named. They
5 should have been dismissed. I'm not sure if they were ever
6 served.

7 THE COURT: Okay. So this is not a settlement, they
8 just -- you want voluntary dismissal?

9 MR. BULLOCK: Yes.

10 THE COURT: Okay.

11 MR. BULLOCK: And if we -- you know, if you -- if the
12 Court would prefer, I can dismiss everybody on the record
13 right now, and just follow it up with the written.

14 THE COURT: Right.

15 MR. BULLOCK: Everybody but Bendix.

16 THE COURT: Okay.

17 MR. BULLOCK: Buffalo Pumps.

18 MR. GOLDMAN: Good morning. David Goldman from the
19 Governo Law Firm in Boston.

20 THE COURT: Thank you, Mr. Goldman. Yes, I did
21 receive your submissions. Thank you.

22 And I have you -- Mr. Goldman, I have Buffalo Pumps
23 named as a defendant in Linda Richards, which is --

24 MR. GOLDMAN: That's actually, I'm not sure how that
25 happened, because been dismissed before the case was removed

1 to Federal Court.

2 THE COURT: Okay. You're dismissed from the Richards
3 case?

4 MR. GOLDMAN: Yes, Your Honor.

5 THE COURT: And what, was it voluntary dismissal
6 or --

7 MR. BULLOCK: Yes, we non-suited them before the case
8 was even removed. That's one of those things that shouldn't
9 have been forwarded.

10 THE COURT: Okay. All right. Thank you. All right,
11 Thomas Feeley, are Buffalo Pumps in --

12 MR. GOLDMAN: I resolved that with Mr. Bullock's firm
13 recently.

14 THE COURT: Okay.

15 MR. GOLDMAN: That's correct.

16 THE COURT: That's been settled, I should say?

17 MR. BULLOCK: Yes. Settled.

18 THE COURT: Vicki Gasiorowski.

19 MR. GOLDMAN: That is still pending, and Mr. Bullock
20 and I spoke this morning about that case. So we have a little
21 bit more to go, in terms of discussions.

22 THE COURT: Okay. Well we could followup on that
23 later.

24 Olivar Hopkins.

25 MR. BULLOCK: That's an interesting case, Your Honor.

1 THE COURT: That's the one -- right, that's the one
2 that there's a remand -- the Magistrate Judge recommended
3 remand.

4 MR. BULLOCK: Yes. And Judge Smith has the report
5 and recommendation under review right now. And it should have
6 never been transferred -- well it wasn't ever officially
7 transferred to the MDS. So we're not even sure how you know
8 about it.

9 THE COURT: Okay. Maybe we can touch upon that
10 briefly, maybe with Mr. Goldman later on and see what we may
11 need to do with that.

12 MR. GOLDMAN: If I may, we resolved that case, as
13 well.

14 THE COURT: Oh, you did.

15 MR. GOLDMAN: Yes.

16 THE COURT: Okay. It's been settled?

17 MR. GOLDMAN: Yes. That was before it was
18 transferred, or if it has been transferred.

19 THE COURT: All right. Thank you.

20 Elizabeth Macknick. I have Buffalo Pumps as a
21 defendant. That's a Connecticut case.

22 MR. GOLDMAN: Right. I spoke with Mr. Bullock about
23 that one. Discussions are --

24 THE COURT: You're still in the case.

25 MR. GOLDMAN: Yes.

1 THE COURT: Okay. Leo Dupuis.

2 MR. GOLDMAN: Same thing.

3 THE COURT: Richard Carroll?

4 MR. GOLDMAN: Resolved that last week.

5 THE COURT: Okay. Hope Olivar?

6 MR. GOLDMAN: That's the estate.

7 THE COURT: That's the executrix.

8 MR. GOLDMAN: Right. That's still open, and I've
9 been in discussions with Mr. Bullock.

10 THE COURT: All right. Robert Hayford?

11 MR. GOLDMAN: Same thing.

12 THE COURT: Okay. And Laura Contois?

13 MR. GOLDMAN: Same thing.

14 THE COURT: All right. I know -- I believe I'm
15 naming the plaintiffs, and not the decedents. Okay. Thank
16 you. Thank you, Mr. Goldman.

17 MR. GOLDMAN: Thank you.

18 THE COURT: All right. Fairbanks Morse Engine.

19 MR. BULLOCK: We agreed to dismiss them, Your Honor,
20 without prejudice, and they've accepted it. And we're in the
21 process of getting the paperwork filed.

22 THE COURT: Okay. That's in the Ryman case.

23 MR. BULLOCK: Yes, sir.

24 THE COURT: All right. Ford Motor Company,
25 Koslowski.

1 MR. GOLDMAN: Resolved.

2 THE COURT: Okay. Foster Wheeler.

3 MR. TOTTEN: Bart Totten. Good morning. On behalf
4 of Foster Wheeler.

5 THE COURT: Bart, what's your last name, again?

6 MR. TOTTEN: Totten. T-O-T-T-E-N.

7 THE COURT: Okay.

8 MR. VEGA: And Dennis Vega.

9 THE COURT: Dennis, what's your last name, again?

10 MR. VEGA: Vega, V-E-G-A.

11 THE COURT: Okay. Both of you are in for Foster
12 Wheeler?

13 MR. TOTTEN: That's right, Your Honor.

14 THE COURT: All right. Let me go through your cases,
15 okay? To see which ones are still viable. Michael Beamis,
16 Rhode Island.

17 MR. TOTTEN: I believe we've been dismissed out of
18 that case.

19 MR. BULLOCK: I believe that's correct, Judge.

20 THE COURT: Has settled?

21 MR. BULLOCK: No, we dismissed them without
22 prejudice. But we did that, I believe, prior to removal.

23 THE COURT: Prior to what?

24 MR. BULLOCK: Prior to removal.

25 THE COURT: Have you filed the appropriate papers?

1 MR. BULLOCK: Yes. We filed them in the Rhode Island
2 proceeding.

3 THE COURT: Okay. And the Judge dismissed it, or
4 entered an order of dismissal?

5 MR. TOTTEN: Yeah, under Rhode Island, she doesn't
6 have to sign it, if they haven't answered.

7 THE COURT: Okay.

8 MR. BULLOCK: So we just filed a stipulation of
9 dismissal without prejudice.

10 THE COURT: Okay.

11 MR. BULLOCK: Before they answered.

12 THE COURT: All right. Thank you. Olivar Hopkins?

13 MR. TOTTEN: That's the one that Mr. Bullock
14 referenced before that's --

15 THE COURT: Are you still in the case, though?

16 MR. TOTTEN: I think we're the only defendant in that
17 Federal case -- no, that's not true. I mis-spoke. There's
18 some others.

19 MR. BULLOCK: Pick & Pack are in that case as well,
20 but they have the same position that the case --

21 THE COURT: All right. Richard Carroll.

22 MR. TOTTEN: We believe we're going to be dismissed
23 from that. We haven't received any settlement demand. I
24 think we -- I don't know that we have been yet, though.

25 MR. BULLOCK: According to my records, Your Honor,

1 they were already dismissed. But if we -- if you were not
2 formally dismissed, if you'll send me a stipulation of
3 dismissal.

4 THE COURT: So just so it's clear, when you say that
5 they're already dismissed, or you're about to dismiss them,
6 I'm going to notify our Clerk's Office that they're going to
7 be dismissed, or should be dismissed --

8 MR. BULLOCK: That's correct, Your Honor.

9 THE COURT: -- from the docket. Okay. Fine.

10 MR. BULLOCK: In preparation for the hearing, we sat
11 down with everybody --

12 THE COURT: Great.

13 MR. BULLOCK: -- did as much as we could to try to
14 either dismiss, or settle, so that you just had as little to
15 deal with as possible.

16 THE COURT: Thank you very much. I do appreciate
17 that.

18 It doesn't happen that many times. All right. Leo
19 Dupuis, again. Are you in that case?

20 MR. TOTTEN: That's the same issue, Your Honor. It
21 should be dismissed.

22 MR. BULLOCK: They are dismissed, Your Honor.

23 THE COURT: You can sit down, you don't have to stand
24 up. I appreciate your respect, but you may be doing that a
25 lot today.

1 All right. Hope Olivar.

2 MR. TOTTEN: We are still in that case, Your Honor,
3 and we're having discussions with Mr. Bullock about it for
4 settlement.

5 THE COURT: Okay. Elizabeth Macknick.

6 MR. TOTTEN: That case has been dismissed, I believe.
7 Or should be dismissed.

8 MR. BULLOCK: Dismissed, Your Honor.

9 THE COURT: All right. Laura Contois.

10 MR. TOTTEN: Same issue. Dismissed, Your Honor.

11 MR. BULLOCK: Dismissed.

12 THE COURT: And Leo Dupuis -- I already said --

13 MR. TOTTEN: That's right. That's dismissed.

14 THE COURT: -- I already talked about that one.

15 Right. Okay.

16 MR. TOTTEN: Yes.

17 THE COURT: Richard Carroll.

18 MR. TOTTEN: And we did talk about that one, as well.
19 It's also dismissed.

20 THE COURT: I'm sorry. All right. Okay. I believe
21 any more -- I completed the list. All right. Great. Garlek
22 Ceiling (phonetic).

23 MR. BULLOCK: I'm not sure which case, Your Honor,
24 but --

25 THE COURT: I have Thomas Feeley, Rhode Island, and

1 Vicki Gasiorowski, Rhode Island.

2 MR. BULLOCK: Yes. Dismissed from both. In fact,
3 they weren't part -- I'm not sure if they were dismissed prior
4 to removal or not. But, yeah, they're dismissed.

5 THE COURT: Okay. Thank you. General Electric.

6 MR. LABELLE: Good morning, Dan LaBelle, Halloran &
7 Sage, for General Electric in Connecticut.

8 THE COURT: Dan, what's your last name, again?

9 MR. LABELLE: LaBelle.

10 THE COURT: Okay. Thank you.

11 MR. THOMEN: Good morning, Your Honor, Jeff Thomen on
12 behalf of General Electric for the Rhode Island cases.

13 THE COURT: Okay. Great. So Mr. LaBelle, you're in
14 the Connecticut cases?

15 MR. LABELLE: Yes, I am.

16 THE COURT: All right. Great. Thank you. All
17 right, let's go through those, the same as we did with the
18 other defendants. Michael Beamis.

19 MR. THOMEN: Yes, Your Honor, we're in it.

20 THE COURT: You're in that. Linda Richards.

21 MR. THOMEN: We're in.

22 THE COURT: Vickie Gasiorowski.

23 MR. THOMEN: Also in, Your Honor.

24 THE COURT: All right. Dwayne Ryman.

25 MR. THOMEN: In that case, Your Honor.

1 THE COURT: All right. Now the Connecticut cases.
2 Leo Dupuis.

3 MR. LABELLE: Still active. And we're in it, Your
4 Honor.

5 THE COURT: All right. Thank you. Richard Carroll.

6 MR. LABELLE: Same, Your Honor.

7 THE COURT: Hope Olivar.

8 MR. LABELLE: Same.

9 THE COURT: And Robert Hayford, Jr.

10 MR. LABELLE: Same.

11 THE COURT: And Laura Contois.

12 MR. LABELLE: Same.

13 THE COURT: Okay. Thank you.

14 MR. BULLOCK: I think there's six, Your Honor. I
15 think I only heard Your Honor call five.

16 THE COURT: Yes. I named five. What's the sixth?
17 Let me go over the ones I have. I have Dupuis, Carroll,
18 Olivar, Hayford, and Contois.

19 MR. BULLOCK: Matchnick.

20 THE COURT: What's the other one?

21 MR. BULLOCK: Matchnick. You mentioned it before, I
22 think, in connection with Buffalo Pumps, Your Honor.

23 THE COURT: Okay. All right. Thank you very much.
24 Yes, I have that. That's still active, right, and you're
25 still -- active case, active claim?

1 MR. LABELLE: Yes, Your Honor.

2 THE COURT: All right. General Motors. And that's
3 the Koslowski case.

4 MR. BULLOCK: Resolved.

5 THE COURT: Resolved.

6 MR. BULLOCK: And, I apologize, I keep jumping up.
7 It's habit.

8 THE COURT: That's all right. No problem. Howden
9 Buffalo.

10 MR. BULLOCK: They need to be dismissed. They
11 haven't been formally dismissed. But we will dismiss them on
12 the record today and file the appropriate pleadings.

13 THE COURT: All right. I did get a letter from a
14 Kevin McCafferty from Brooklyn, New York, saying he
15 represented them. And he gave me a position. But you're
16 dismissing those?

17 MR. BULLOCK: I'm dismissing them.

18 THE COURT: Okay. All right. Jaquays Asbestos.
19 Koslowski. That's also dismissed?

20 MR. BULLOCK: Dismissed.

21 THE COURT: All right. Now Packings & Insulation. I
22 did get a letter from Marsha Maloney in Rhode Island saying
23 they've been resolved?

24 MR. BULLOCK: Yes. We've met in preparation for the
25 hearing, and they provided us deposition testimony and

1 affidavits indicating they didn't provide products. So we
2 dismissed them.

3 THE COURT: All right. Just so the record's clear,
4 so on Beamis, Richards, Feeley and Gasiorowski, they're all
5 dismissed --

6 MR. BULLOCK: Right.

7 THE COURT: I mean Packings & Insulation's dismissed
8 from this case. Okay.

9 Phillip Brothers. Now that's Koslowski.

10 MR. BULLOCK: Dismissed.

11 THE COURT: Dismissed. And we did get a letter from
12 a Mr. Spunt, who will be happy to hear that you dismissed his
13 case, because he apparently is counsel of record. But he's
14 now is with a different firm, and can't find the file, and
15 etcetera, etcetera. So -- I'm sorry.

16 MR. OSWALD: Your Honor, my name is James Oswald.
17 I'm the person that Mr. Spunt referenced in his letter. He's
18 an older gentleman who practiced for many, many years in Rhode
19 Island.

20 There's a connection between Mr. Spunt and somebody
21 in my firm. We don't represent Phillip Brothers.

22 THE COURT: What's your name? I'm sorry.

23 MR. OSWALD: James Oswald.

24 THE COURT: Okay.

25 MR. OSWALD: I'm referenced in the letter and --

1 THE COURT: Okay.

2 MR. OSWALD: I'm just letting you know. I'll relay
3 the message to Mr. Spunt.

4 THE COURT: Okay. Did you represent anybody else
5 here?

6 MR. OSWALD: I was here -- I also represent Foster
7 Wheeler, but not for purposes of today. My partner Bart
8 Totten, who you're already heard from.

9 THE COURT: All right. Great. Thank you, sir.
10 Well, anyway, it's all moot anyway. So Phillips Brothers has
11 been dismissed.

12 MR. BULLOCK: Correct.

13 THE COURT: Okay. PIC Contractors. I have a letter
14 from Mark Nugent saying that it's been dismissed.

15 MR. BULLOCK: Right.

16 THE COURT: That's Beamis, Richards, BUE, Ryman and
17 Gasiorowski.

18 MR. BULLOCK: Correct.

19 THE COURT: Topco -- Taco, Inc.

20 MR. BULLOCK: They're still in it.

21 THE COURT: Okay. They were named in the Feeley,
22 Ryman and Gasiorowski. Anybody represent Taco, Inc.? Do you
23 know who represents them? Have you talked to anybody
24 recently, in your efforts to try to streamline this?

25 MR. BULLOCK: Our senior partner Jim Early has been

1 talking to national counsel for Taco on resolving all of them.
2 And I'm not 100 percent sure why they didn't come today.

3 But I know that they're in active discussions to
4 resolve it.

5 MR. GOLDMAN: I'm not with that firm, but I'm pretty
6 sure it's McGivney, Kluger in Boston that represents them.

7 MR. BULLOCK: And they may have been under the mis-
8 impression that they were resolving actively and that there
9 wasn't any need to appear.

10 THE COURT: Yes.

11 MR. BULLOCK: We haven't had a problem with them,
12 Your Honor. I mean, to the extent we can't resolve it today,
13 I mean, we can report to the Court whether we need a
14 settlement conference.

15 THE COURT: Right. Well I know we served notice of
16 the hearing on whoever entered their appearance, and I don't
17 have the docket in front of me, but we can track this down.
18 But -- all right. Well the only thing I'm concerned about is,
19 I may enter a scheduling order today on -- that may effect
20 them, and they're not here. But we gave them notice.

21 MR. BULLOCK: I don't believe any of the Rhode Island
22 cases need a scheduling order.

23 THE COURT: All right. Okay. We'll talk about that.
24 Flintco Company, that's Koslowski, again.

25 MR. BULLOCK: They're bankrupt.

1 THE COURT: All right. You're dismissing them?

2 MR. BULLOCK: Yes.

3 THE COURT: Viacom Inc. They're in the Contois case
4 in Connecticut.

5 MR. BULLOCK: Correct. Somebody here for
6 Westinghouse?

7 MR. MIRABILE: Yes. Your Honor, Mirabile of McShea,
8 Tecce firm in Philadelphia, here for Michael Everet from
9 Everet, Weathersby in Atlanta. I believe his firm has sent
10 you a position paper. I'm here today for CBS, successor to
11 Westinghouse.

12 THE COURT: Right. I did get a position paper from -
13 - but Viacom what, is a successor or --

14 MR. MIRABILE: It's part of the corporate history.
15 It was Westinghouse, then CBS, then Viacom. Now it's CBS,
16 again. But --

17 THE COURT: Okay. So you're here for them today?

18 MR. MIRABILE: Yes, sir.

19 THE COURT: Okay. Both for Viacom and CBS
20 Westinghouse.

21 MR. MIRABILE: It's the same thing, Your Honor.

22 THE COURT: Okay. Thank you. All right. Okay.
23 Viad Corp. Mr. Hadden. And I have Viad in the Beamis, Rhode
24 Island case, Richard, Rhode Island, Macknick, Connecticut;
25 Dupuis, in Connecticut, and Carroll.

1 MR. HADDEN: What was the first one, Your Honor?

2 THE COURT: Sure. Michael Beamis.

3 MR. HADDEN: I don't have that one. I'll have to
4 look into that. I'm not sure maybe --

5 MR. BULLOCK: In all fairness, Your Honor, when I was
6 reviewing the files for Rhode Island, I was under the
7 impression that Viad had been dismissed from the Rhode Island
8 cases. But I also don't think an order was issued, which is
9 problematic, because they probably should not have been
10 dismissed. So I'm not real clear myself on Viad's status.

11 I know no formal dismissal's been made. But I think
12 Viad may have been misled in the position that we were taking,
13 because I think in the position paper, or synopsis, that Viad
14 was not reported as having any product ID.

15 THE COURT: I'm sorry, what was the last thing you
16 said?

17 MR. BULLOCK: Was not reported as having any product
18 identification.

19 THE COURT: Oh.

20 MR. BULLOCK: So I, you know, if the Court would
21 prefer, because it's our error, we'll dismiss Viad.
22 Otherwise, we'd rather leave Viad in and straighten out the
23 problem and have discussions with Viad on the Rhode Island
24 docket.

25 We are prepared, and they are aware of the

1 Connecticut docket.

2 THE COURT: Okay. So it's only the Beamis and the
3 Richards cases. You're saying they were dismissed, but they
4 shouldn't have been dismissed.

5 MR. BULLOCK: I'm saying that the position paper, I
6 think that we filed with the Court, was representing there was
7 no product identification.

8 THE COURT: Okay.

9 MR. BULLOCK: So, consequently, no demand went out to
10 Viad. So Viad probably is not aware that we were asserting
11 claims against them.

12 When I realized the error, no dismissal had been
13 entered. But if the Court was going to hold us to the fact
14 that in the position paper that we took that position, I was
15 prepared to dismiss them, but would prefer not to and actually
16 send a demand and discuss with them how to handle the cases.

17 THE COURT: All right. Well maybe what we'll do is,
18 Mr. Hadden, we'll discuss this a little bit and see where we
19 go with it. All right? For right now I guess technically
20 they're still in the case.

21 MR. BULLOCK: Technically, they're still in.

22 THE COURT: All right. So that's Viad. All right.
23 Crane & Company.

24 MR. COTTLE: Good morning, Your Honor. Eric Cottle,
25 C-O-T-T-L-E. Crane & Company.

1 THE COURT: Okay. And that's only one case, right?

2 MR. COTTLE: Yes.

3 THE COURT: The Contois case. Laura Contois. Okay.
4 And they're still active cases, right?

5 MR. COTTLE: I believe so.

6 THE COURT: All right. Thank you. And I believe
7 that's it. Is anybody here that I haven't called for a
8 defendant? Okay.

9 All right, let's -- I was going to go through these
10 individually, but if Mr. Bullock's telling me that the Rhode
11 Island cases, there's no need to enter a scheduling order, let
12 me hear from you on that. What's your position on it?

13 MR. BULLOCK: Well, Your Honor, in the, I guess
14 there's no reason to list them. We pretty much have done all
15 the discovery that needs to be done. The plaintiff has been
16 deposed and ship records that were available have been
17 produced to all the defendants.

18 We routinely provide them, even to the removing
19 defendants. We tried to engage in corporate discovery of the
20 individual defendants in the MDL, but they have declined,
21 because a scheduling order wasn't issued.

22 So for the -- I guess, technically, a scheduling
23 order, I mis-spoke, should be issued only for the limited
24 purposes of taking the 30(b)(6) of GE, and 30(b)(6) of Foster
25 Wheeler.

1 Those are the two that we're looking for to complete
2 the case.

3 They declined to engage in any discovery without such
4 a scheduling order. But other than that, the plaintiff's
5 already been deposed, the medical records have been produced,
6 the med link has been produced. Ship documents where they're
7 applicable. So there really isn't that much to do.

8 THE COURT: Prior to the transfer, there never was a
9 scheduling order.

10 MR. BULLOCK: No.

11 THE COURT: And, obviously, as far as I know, there's
12 been no scheduling issue by this Court, so --

13 MR. BULLOCK: Correct.

14 MR. TOTTEN: Your Honor, Bart Totten, on behalf of
15 Foster Wheeler. Which cases were you referring to, Mr.
16 Bullock? I didn't hear the names of the Rhode Island cases.

17 THE COURT: Well here's what I have. Here's what I
18 have. I have Michael Beamis, okay. Vickie Gasiorowski.
19 Olivar Hopkins. Linda Richards. Dwayne Ryman. Wayne
20 Koslowski, and we only have that -- that's the break case.
21 And Thomas Feeley.

22 MR. TOTTEN: Right.

23 THE COURT: Okay.

24 MR. BULLOCK: And Hopkins, of course, depends on
25 whether the Court wants to --

1 THE COURT: Right.

2 MR. TOTTEN: And that was the only case that Foster
3 -- you referenced a 30(b)(6) deposition of Foster Wheeler.
4 The only case Foster Wheeler is in, in Rhode Island, is
5 Hopkins. So that was my concern is that --

6 THE COURT: Okay.

7 MR. TOTTEN: -- we deal with that issue.

8 MR. BULLOCK: And then we do have Foster Wheeler in
9 one of the Connecticut case that also we'd need a 30(b)(6).

10 THE COURT: All right. Well have you gone beyond
11 fact -- we still need a scheduling order because beyond fact
12 discovery, you would need to have time for a designation of
13 expert reports.

14 MR. BULLOCK: We've already done that.

15 THE COURT: You've already done that. Okay.

16 MR. BULLOCK: I mean --

17 THE COURT: So if we don't settle, it's ready to try
18 it, or to remand it.

19 MR. BULLOCK: Well the removing defendants have not
20 participated in the expert depositions, unless they happen to
21 have another client that was in the state court proceeding
22 that was running parallel to that.

23 So as to whether or not they actually need to depose,
24 but, yes, we've exchanged expert reports, in the sense that we
25 have produced all -- any reports that our experts did.

1 Rhode Island, interestingly, doesn't require expert
2 reports. Now we do have them for our pathologists, our
3 diagnosing pathologists. And we do provide that routinely to
4 the defendants.

5 But as far as our admiralty expert, he doesn't write
6 a report. But we make him available for deposition. And we
7 offer him including notifying the -- defendants.

8 And I guess you're technically correct, to the extent
9 that they -- you're telling them now, it's time, you know, put
10 up or shut up, you want to take their deposition, take their
11 deposition, I guess we do need a scheduling order for that.

12 THE COURT: All right. And counsel --

13 MR. TOTTON: Your Honor, with respect to Hopkins, and
14 I know that that case has not been transferred to the MDL, we
15 know that. There has been no -- Foster Wheeler has engaged in
16 no discovery, no fact discovery, no expert discovery.

17 It was -- the case was removed, and there has been
18 parallel state court discovery. But Foster Wheeler has not
19 participated in that.

20 MR. BULLOCK: Well that's not exactly correct, Your
21 Honor.

22 MR. TOTTON: Well I'm sorry.

23 MR. BULLOCK: Foster Wheeler did attend the
24 plaintiff's deposition, and did examine.

25 MR. TOTTON: That's correct, Your Honor. That was

1 before removal. I apologize. That is correct.

2 THE COURT: Just so I understand, Mr. Bullock, I
3 understand -- maybe I don't understand the Rhode Island rules
4 in state law, but you're saying they don't require expert
5 reports. But the Federal Rules do. So I do think I would
6 need to enter a scheduling order.

7 MR. BULLOCK: You're correct.

8 THE COURT: Okay. So if I -- just to recap, so I
9 understand, and the defense counsel here that, all the fact
10 discovery's been completed, with the, obviously with the
11 exception of the Foster Wheeler, Hopkins case, and that's kind
12 of a aberration right now.

13 But with respect to all of the other cases --

14 MR. ROSE: Your Honor, the Koslowski case --

15 THE COURT: I'm sorry, your name, again.

16 MR. ROSE: Benjamin Rose for Bendix.

17 THE COURT: Right.

18 MR. ROSE: There may be some medical related
19 discovery remaining in that case. Plaintiff has been deposed,
20 and is deceased. We may need to obtain -- I'm trying to
21 determine if there are any pathology materials that maybe
22 could be reviewed before we can produce our expert witness.

23 MR. BULLOCK: Your Honor, in regards to Koslowski,
24 that case has been filed since 1992. And we have been trying
25 to resolve this case with Bendix, and they've taken a no pay

1 position previous. I don't know if they're coming here today
2 -- but when we met with Mr. Glassman, he specifically told
3 them when they raised this same concern, you have had 15 years
4 to get your medical lined up.

5 The time for discovery is over. You're wasting the
6 Court's time. And I suggest to the Court, that they're
7 wasting Court's time today. I mean, 15 years, and they can't
8 get a pathologist to look at something?

9 I mean, we've been trying to get this case resolved,
10 and had the most difficult time. We finally resolved with
11 General Motors and Ford, you know, over the course of the last
12 couple of months that we've been dealing with the MDL.

13 They're the last holdout. It's amazing that
14 everybody else can do everything in Koslowski, except for
15 Bendix.

16 THE COURT: I mean, you obviously gave them whatever
17 pathology reports you had and --

18 MR. BULLOCK: Yes. A long time ago.

19 THE COURT: All right. I'm sorry, your name, sir?

20 MR. THOMEN: Jeff Thomen, Your Honor. With regard
21 to --

22 THE COURT: Now who do you represent, again?

23 MR. THOMEN: General Electric.

24 THE COURT: Okay.

25 MR. THOMEN: In the Rhode Island.

1 THE COURT: Right.

2 MR. THOMEN: With regard to the Gasiorowski case,
3 just to be clear on that, I believe that there is still some
4 outstanding discovery. Although I'm confident, Your Honor, at
5 least 3 out of the 4 cases today that -- which General
6 Electric's in, we've made some good progress with plaintiff's
7 counsel before this hearing. May resolve it, in any event,
8 today.

9 But I just wanted to make it clear that there's been
10 no -- there's additional fact discovery remains in
11 Gasiorowski. I believe there may be some issues in Beamis and
12 Richards. But, again, those are also cases that I believe
13 that we can probably make some good progress on today.

14 THE COURT: All right. How much -- if we don't
15 resolve it, how much time do you think you need?

16 MR. THOMEN: In terms of --

17 THE COURT: Of completing the fact discovery. You
18 mentioned there's two or three cases you need to finish up
19 some discovery.

20 MR. THOMEN: Well Gasiorowski, we only have the
21 written discovery response, at this point. No depositions
22 have taken place. It's fairly new case that's in the MDL.

23 MR. BULLOCK: Your Honor, in regard to that
24 particular case, the -- we finally got the case, the client --
25 or the person, who we're suing over, had already passed away.

1 Okay. So it's impossible to depose him. And we have not been
2 able to locate any co-workers. So we're basically recreating
3 and trying to meet our burden of proof with a maritime expert,
4 who will testify as to more probably than not what his job
5 duties were and what his possible exposures were.

6 So in that respect, it's really only the expert. But
7 I don't disagree, after rethinking it, a scheduling order of
8 say 60 days for any fact discovery that's left, 30 days for
9 experts, I, you know, I would say would be, you know,
10 generally appropriate.

11 THE COURT: Hold on, just on Gasiorowski?

12 MR. BULLOCK: I would say on any of them that the
13 defendants claim that they need discovery, with the exception
14 of Koslowski. I think that waiting 15 years to do something,
15 is too long.

16 THE COURT: Okay.

17 MR. THOMEN: Your Honor, I -- I'm not in Koslowski,
18 so I can't speak to that.

19 THE COURT: Right.

20 MR. THOMEN: Aside from that, I would think there
21 would be a little bit more of a scheduling order, in terms of
22 we'd like the time for at least two of the cases, Gasiorowski
23 being one of them. But, again, we can probably discuss that.
24 I think General Electric may be the only defendant left in
25 that case, if I'm correct.

1 So that may obviate the need even to do a scheduling
2 order if we end up resolving that here today.

3 THE COURT: All right. Okay. What I'll do is, when
4 we have our settlement discussions, at the end of that, if we
5 can't resolve it, I'll again revisit this issue of discovery.
6 Where do we go moving the case forward. But what my purpose
7 is today, if we haven't resolved it, we're going to enter some
8 type of order where we're going to get these things to a point
9 where they're either going to be tried, or remanded back to
10 the state court.

11 Or a position where at least Mr. Bullock can file a
12 motion to remanded it, and get the case back in the state
13 court, if it's not going to be tried here.

14 I'm sorry, Mr. Hadden, did you want to say something?

15 MR. HADDEN: Your Honor, I was just going to jump in,
16 since it seems unclear, I mean, if counsel's willing to
17 dismiss Viad from the Rhode Island cases, then I won't take a
18 position on it.

19 But it seems -- seems that that's not definite right
20 now. Then I would just say, out of ignorance, I'm going to
21 have to ask the Court to enter the usual scheduling order,
22 just to protect my client's interests, until we get a
23 commitment out of counsel.

24 Then you said we would do it afterwards, so I'm fine
25 waiting.

1 THE COURT: But for the record, you want a -- okay.
2 I understand.

3 MR. HADDEN: Yeah. That's fine. Thank you, Your
4 Honor.

5 THE COURT: All right.

6 MR. BULLOCK: And let me suggest, just for the
7 benefit of counsel, if I resolved everybody else here today
8 except for Viad, I'll dismiss Viad, just to get rid of the
9 case. So before you enter a scheduling order, let's see how
10 far we can get.

11 THE COURT: All right. I'm sorry, sir, you wanted to
12 say something? I know you're only in the one case.

13 MR. COTTLE: Yeah, I'm only in one case, Your Honor.
14 But if we were going to get into the scheduling order at this
15 point, I was just going to make a suggestion on how it should
16 evolve.

17 And it's just for -- at least Crane Co's position is,
18 discovery, I think we should have a briefing schedule for
19 summary judgment, before we get into the expense of experts,
20 expert reports and retention, to see if those claims are
21 viable, after summary judgment.

22 Then we can get on with the experts. But I just
23 wanted to have somewhere built in after the fact discovery, at
24 least in our case there's no ID, for Your Honor to make a
25 determination as to whether the plaintiffs have met their

1 burden then, before we go on and hire expert --

2 THE COURT: What I've done in all the cases is I --
3 the scheduling order is a little bit unusual than the typical
4 civil cases. I have fact discovery first, then I have a
5 settlement conference. Which I'll probably do again in these
6 cases, if we can't resolve it today.

7 Not that I'm trying to delay settlement discussions,
8 I want to get them resolved today, but -- so that, if someone
9 says, like a lot of the defendants say, I can't resolve it, I
10 haven't had enough discovery.

11 I say, fine, we'll have fact discovery, then you'll
12 come back and see me again. And then, it sounds like, just
13 meeting Mr. Bullock, that if he doesn't have the evidence on
14 your client I think he's either going to dismiss it or -- I'm
15 not sure it's even necessary to have the expert. But what I
16 do after that point, then if we can't resolve it after the
17 second conference, we'll have expert -- exchange of expert
18 reports, then we have the summary judgment briefing schedule.

19 But let's see where we are at the end of the day.
20 Okay?

21 MR. COTTLE: Okay.

22 THE COURT: All right. Does that complete, at least,
23 discussion on the scheduling -- on the Rhode Island cases?
24 What about the Connecticut cases, Mr. Bullock? Give me a
25 general overview of where we are on the discovery in those

1 cases.

2 MR. BULLOCK: In the Olivar case, a scheduling order
3 has to be entered. Discovery is not complete. That one I
4 think we can all agree on. And, in fact, unfortunately, Your
5 Honor, meaningful talks with Foster Wheeler, and General
6 Electric, and Buffalo Pumps have not been able to go forward,
7 because discovery is not complete.

8 So I think the best thing to do is -- I'm not even
9 sure a settlement a conference today would be helpful, just an
10 entry of a scheduling order, so we can get discovery
11 completed.

12 THE COURT: On Olivar?

13 MR. BULLOCK: On Olivar, yes.

14 THE COURT: All right. And how about the other ones?

15 MR. BULLOCK: The position of the plaintiffs in the
16 other cases is that all fact discovery has been completed.
17 I'm sure the defendants will disagree.

18 THE COURT: Okay. Just very briefly, how much time
19 do you think we need for Olivar, for fact discovery?

20 MR. BULLOCK: I would ask for 120 days of fact
21 discovery.

22 THE COURT: All right. And let me hear from counsel,
23 anybody want to be heard on the Connecticut cases, on
24 potential scheduling order on fact discovery? We can start
25 with Olivar, first.

1 MR. LABELLE: Dan LaBelle for General Electric, Your
2 Honor. I'd respectfully suggest that we use our standard
3 scheduling order for 120 days for fact discovery on all the
4 cases.

5 I agree with Mr. Bullock that, in some of the cases,
6 there has been substantial discovery taken, but just to cover
7 the base and protect my client, I'd ask for that, a hundred --
8 these cases are not old.

9 They're not -- some are from '07, but some of them
10 are very recent, and I don't think 120 days to complete fact
11 discovery on both sides is unreasonable.

12 MR. BULLOCK: There are a couple of cases, Your
13 Honor, that I would ask the Court to deviate from the standard
14 scheduling order, and it's something that I would feel more
15 comfortable in private settlement negotiation discussions.

16 THE COURT: All right. Okay. Maybe what we'll do
17 is, we'll turn to our settlement discussions, and maybe, it
18 sounds like we should start with Rhode Island first, because
19 you're further along, it sounds like.

20 In fact, I'd like Mr. Bullock, in the settlement
21 discussions with the Rhode Island cases.

22 MR. BULLOCK: Yes, sir. That's great.

23 THE COURT: All right. Then what we'll do is, those
24 cases remaining, that are not settled, or we haven't resolved
25 them, either by settlement or voluntary dismissal, we could

1 figure out where to go ahead with the scheduling order.

2 But what I want to do, and, Mr. Bullock, I hope this
3 approach is okay with you, is I thought what I would do is
4 just call you back with counsel for one defendant at a time.
5 Because it sounds like you've been talking to them already.

6 Okay? Would you want to start with anybody in
7 particular? How about we -- the Koslowski case, maybe we can
8 see if we can knock that one out, since that's only one
9 defendant and you've already settled with a lot of other
10 defendants. Okay? All right. Is that okay with counsel?
11 All right. That's what I thought we'd do.

12 I'll try to move this as quickly as possible, all
13 right, so I, you know, we'll see where we are. All right?
14 Okay. So let's go off.

15 (Court adjourned)

16 * * * * *

17

1
2
3
4
5
6
7
8

C E R T I F I C A T I O N

I, Josette Jones, court approved transcriber, certify that the foregoing is a correct transcript from the official electronic sound recording of the proceedings in the above-entitled matter.

-----	-----
JOSETTE JONES	DATE
DIANA DOMAN TRANSCRIBING	